IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 358 of 1992
to
INCOME TAX REFERENCE No 358-C of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SARABHAI PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 358 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR BHARGAV KARIA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue as well as the assessee, the following questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment years 1978-79 and 1979-80.

At the instance of the Revenue

"Whether the Appellate Tribunal is right in law in upholding the order of the Commissioner of Income-tax (Appeals) bifurcating the income as income from "house property" and income from "other sources"?

At the instance of the Assessee

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was not justified in accepting the income from complex letting as 'Income from Business."?

2. Sr. Standing Counsel Shri M.R. Bhatt has appeared for the revenue and learned advocate Shri Bhargav Karia has appeared for the assessee.

3. The learned advocates have fairly submitted that the questions, which have been referred to this court at the instance of the revenue and the assessee, were subject-matter of I.T.R. No. 134/88 which has been decided on 21.11.2002. It has been submitted by them that in I.T.R. No. 134/88, this court was concerned with the questions which had arisen for assessment years 1974-75 and 1975-76. It has been also submitted by them that the questions, which have been raised in these references, are squarely covered by the judgment delivered in I.T.R. No. 134/88 decided on 21.11.2002.

4. The facts, which have given rise to these references, in a nutshell, are as under:

5. The assessee owned buildings, which were given on rent. In addition to giving the buildings on rent, the assessee had rendered certain services to the tenants as

a part of its business and the assessee used to get amount not only towards rent but also towards services rendered by it.

6. The question was whether the amount, which was received by the assessee, should be taxed as 'income from house property' or 'income from other sources' or income from 'profits and gains of business or profession.'

7. After considering the facts of the case and looking at the law laid down by the Hon'ble Supreme Court, in I.T.R. No. 134/88 this court held that the amount of rent, which the assessee had received, should be treated as 'income from house property', whereas the amount, which the assessee had received towards services rendered to its tenants, should be treated as 'income from profits and gains of business or profession' because the assessee was in the business of leasing its properties and was also rendering services to its tenants as a part of its business.

8. In the light of what has been stated hereinabove and in view of the judgment delivered in I.T.R. No. 134/88, we answer the questions as under:

9. So far as the common question, which has been referred to this court at the instance of the revenue for both the assessment years is concerned, we answer the question partly in the affirmative and partly in the negative. We hold that the Tribunal was right when it directed that the income should be bifurcated and the income received by way of rent should be charged under the head "income from house property" but it was not right when it directed that the rest of the income, i.e. the income received from rendering services should be charged under the head "income from other sources". For the reasons stated in the judgment delivered in I.T.R. No. 134/88, we are of the opinion that the income, which the assessee has earned by rendering services to its tenants, should be treated as income from 'profits and gains of business or profession' as the assessee was in the business of rendering such services.

10. So far as the question, which has been referred to this Court at the instance of the assessee is concerned, we answer the same in the affirmative i.e. in favour of the assessee and opine that the income, which does not pertain to rent, should be treated as income from "profits and gains of business or profession".

The references, thus, stand disposed of with no

order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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